

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. § 1332 as there is diversity of citizenship and the amount in controversy, excluding interest and costs, exceeds \$75,000.00.

7. This Court is the proper venue for this matter and may exercise personal jurisdiction over Defendant because the transactions and/or occurrences out of which the cause of action set forth below arose occurred in the Western District of Pennsylvania, and Defendant transacted business within the Western District of Pennsylvania.

8. Moreover, the August 21, 2006, Agreement between Spartan and Defendant (“Agreement”), is governed by the laws of the Commonwealth of Pennsylvania and is deemed to have been executed and performed at the office of Spartan, which is located in the Western District of Pennsylvania. See August 21, 2006, Agreement attached hereto, and incorporated herein, as Exhibit B, p. 27, “Acceptance”.

FACTUAL BACKGROUND

THE AGREEMENT

9. On or about August 21, 2006, Spartan and Defendant entered into the Agreement whereby Spartan agreed to provide certain services and materials as specifically set forth in the Agreement. See Exhibit B.

10. Pursuant to the terms of the Agreement, Defendant agreed to pay Spartan the sum of Nine Hundred Thirty Seven Thousand Dollars (\$937,000.00) for the services and materials. See Exhibit B.

11. Pursuant to the terms of the Agreement, in the event of any dispute, Spartan is entitled to reimbursement of reasonable attorneys’ fees. See Exhibit B, p. 27, “Acceptance”.

12. After further negotiations, Defendant agreed to pay Spartan the sum of Nine Hundred Ten Thousand Dollars (\$910,000) for the services and materials specifically set forth in the Agreement.

13. Spartan provided services and materials to Defendant as specifically set forth in the Agreement.

14. Spartan sent Defendant invoices (the "Invoices") for the services and materials it provided pursuant to the Agreement. True and correct copies of the Invoices are attached hereto, and incorporated herein, as Exhibit "C".

15. Despite Spartan's full performance under the Agreement, and repeated demands for payment, Defendant has failed and refused to comply with the Agreement by paying all the Invoices.

COUNT I – BREACH OF CONTRACT

16. The foregoing paragraphs of the Complaint are hereby incorporated by reference as though fully set forth at length herein.

17. Defendant breached the Agreement by failing to pay all the Invoices when due and owing.

18. Specifically, Defendant has failed to pay Invoice No. 9140772, dated September 17, 2007, in the amount of One Hundred Thirty Eight Thousand Dollars (\$138,000.00).

19. As a direct and proximate result of Defendant's breach, Spartan has incurred damages.

WHEREFORE, Plaintiff, Summit Steel & Manufacturing, Inc., as the assignee of Spartan Machinery, Inc., respectfully requests this Honorable Court enter judgment in its favor and against Defendant, Modar, Inc., in the amount of One Hundred Thirty Eight Thousand

Dollars (\$138,000.00), plus interest, costs of suit, attorneys' fees, and any such further relief deemed just and appropriate under the circumstances.

COUNT II –UNJUST ENRICHMENT (IN THE ALTERNATIVE)

20. The foregoing paragraphs of the Complaint are hereby incorporated by reference as though fully set forth at length.

21. As set forth above, Spartan has sustained damages due to Defendant's failure and refusal to pay the Invoices even though Spartan fully performed its obligations pursuant to the Agreement.

22. It is unconscionable for Defendant to benefit from the services and materials provided by Spartan without complying with the Agreement.

23. Defendant will be unjustly enriched if Defendant is permitted to retain the services and materials without payment of the Invoices.

WHEREFORE, Plaintiff, Summit Steel & Manufacturing, Inc., as the assignee of Spartan Machinery, Inc., respectfully requests that this Honorable Court enter judgment in its favor and against Defendant, Modar, Inc., in the amount of One Hundred Thirty Eight Thousand Dollars (\$138,000.00), plus interest, costs of suit, and any such further relief deemed just and appropriate under the circumstances.

Respectfully submitted,

FOX ROTHSCHILD LLP

Date: July 26, 2011

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